BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE NO. 02-466
RE: JUDGE JOHN RENKE III

THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION'S RESPONSE TO JUDGE JOHN RENKE, III'S MEMORANDUM OF LAW AND MOTIONS FOR SUMMARY JUDGMENT ON THE AMENDED FORMAL CHARGES

The Florida Judicial Qualifications Commission (the "JQC") hereby responds to Judge John K Renke, III's ("Judge Renke") Memorandum of Law Regarding the Standards for Considering Canon 7A(3)(a) and 7(3)(d)(iii) Formal Charges ("Memorandum of Law") and Motions for Summary Judgment on Amended Formal Charges 1 through 7, as follows.[1]

I. FEDERAL LAW AND SUMMARY JUDGMENT

Amended Formal Charge Nos. 1 through 7 all allege that Judge Renke knowingly and purposefully misrepresented to the voting public material facts regarding his status, endorsements, experience and qualifications to be a circuit court judge. It is undisputed that under Canon 7 and Weaver v. Bonner, 309 F. 3d 1312 (11th Cir. 2002), Judge Renke can be constitutionally disciplined under Florida law for "false statements that are made with knowledge or falsity or with reckless disregard for the truth. . . ." Weaver at 1319.[2] The issue on all seven

[1] For reasons explained therein, the JQC is responding separately to Judge Renke's Motion for Summary Judgment on Amended Formal Charge, which is now Second Amended Formal Charge No. 8.

[2] The Florida Supreme Court Amended Canon 7 to comply with Weaver after that decision was handed

charges is whether Judge Renke knowingly made the false representations alleged in violation of Canon 7. Judgment here is thus entirely a matter of Florida substantive law.

It is Judge Renke's intent based on all the surrounding circumstances which is at issue. "[I]ntent is a question of fact that should not be decided on a summary judgment." Sanders v. Wausau Underwriters, Ins. Co., 392 So. 2d 343 (Fla. 5th DCA 1981). Amended Formal Charge Nos. 1 through 7 allege that Judge Renke made material misrepresentations with knowledge that the representations were false. The JQC has alleged and must prove fraudulent intent, which may "be proved by circumstantial evidence," and "summary judgment is rarely proper" on such issues. Cohen v. Kravitt Estate Buyers, Inc., 843 So. 2d 898, 991 (Fla. 4th DCA 2003) (citing Dep't of Revenue v. Rudd, 545 So. 2d 367, 372 (Fla. 1st DCA 1989) (citations omitted). Indeed, "[a] litigant has a right to trial where there is the slightest doubt as to the facts in a fraud case." Rudd, 545 So. 2d at 372 (quoting Dean v. Gold Coast Theatres, Inc., 156 So. 2d 546, 549 (Fla. 2d DCA 1963)).

"Since the whole context is necessary for the determination [of fraudulent intent] it is seldom that one can determine" this issue "without trial." Alepgo Corp. v. Pozin, 114 So. 2d 150 (Fla. 3d DCA 1959). "Even where the facts are undisputed, issues of interpretation of such facts may be such as to preclude the

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down, and the Amended Formal Charges here clearly do so because each alleges the actionable representations were knowingly false.

award of summary judgment." Franklin County v. Leisure Properties, Ltd., 430 So. 2d 475 (Fla. 1st DCA 1983).

Even if the record evidence did not conclusively show the existence of numerous genuine issues of fact for trial on all of the charges, Judge Renke's denial of improper intent and assertion of good faith in his pleadings, standing alone, precludes summary judgment. "Accordingly, the pleadings . . . create a genuine issue of material fact as to the existence of malice" and "this factual dispute cannot be resolved on summary judgment." Allington Towers Condo. North, Inc. v. Allington North, Inc., 415 So. 2d 118, 120 (Fla. 4th DCA 1982) (defense of "good faith" created "a factual issue as to the malicious intent element of "the cause of action" thus precluding summary judgment.

II. JUDGE RENKE IS NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW

Applying the foregoing controlling standards, it is manifest that the pleadings and the record evidence present numerous genuine issues of fact for trial, and summary judgment must be denied. Cohen and Rudd, supra. The undisputed facts and Judge Renke's own testimony conclusively establish that this is so.

A. Amended Formal Charge No. 1: A Judge With Values

Amended Formal Charge No. 1 alleges:

> During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii) you knowingly and purposefully misrepresented in a campaign brochure, attached hereto as Exhibit A, that you were an incumbent judge

> by describing yourself as "John Renke, a Judge With Our Values" when in fact you were not at that time a sitting or incumbent judge.

It is undisputed that Judge Renke caused the printing and distribution of a campaign mailer which described him in big block letters as "John Renke a judge with our values." See Exhibit A to the Motion for Summary Judgment Amended Formal Charge V; Exhibit A to Judge Renke's Deposition Transcript (hereinafter "Judge Renke Depo."). It is undisputed that the first page of the mailer says "John Renke a judge with our values" overlayed onto a picture of Judge Renke and his family. Judge Renke Depo., Exhibit A.

It is undisputed that the mailer describes him as a "judge," not a judicial candidate or aspiring or potential judge, but as a "judge" in big print. Judge Renke Depo., p. 21. There are references to Judge Renke practicing law, but they appear in very small print on the second page. Id., p. 24. It is undisputed that anyone who did not read the entire mailer (or just looked at the first page) would see him identified as a "judge." Id., pp. 24-25.

Thus, it is undisputed that the mailer falsely identified and described a judicial candidate as a "judge," and Judge Renke saw all his campaign literature before it was distributed to the public and he admits he was and is responsible as a matter of law for all aspects of his campaign. Judge Renke Depo., pp. 13-15. Whether this now indisputably false characterization was made and disseminated "knowingly" as alleged in Amended Formal Charge No. 1 is at best for Judge

Renke a genuine issue of material fact for trial based on the undisputed facts alone.

Judge Renke attempts to shift responsibility for this misrepresentation to his political consultant, John T. Hebert ("Hebert"). See Motion for Summary Judgment Amended Formal Charge I, pp. 2-3. This is hardly a basis for summary judgment, since it is undisputed that Judge Renke was and is responsible for the mailer and the misrepresentation as a matter of law. Hebert's post hoc excuses and rationalizations further demonstrate the necessity for trial and the inappropriateness of summary judgment.

Judge Renke argues that it is sufficient if the JQC "show(s) that he published the statement knowing it was false or that he seriously doubted the truth of the statement." Motion for Summary Judgment Amended Formal Charge No. 1, p. 3. Yet "the statement" was obviously false since Judge Renke was not then a judge. It is inconceivable how Judge Renke could not have known that it was a misrepresentation to describe himself as a "judge" in big bold letters on the cover page of the mailer. The assertion that "the judge and his consultant never intended to convey the impression that he was an incumbent" is absurd on the face of the mailer, and aptly demonstrates that this presents yet another factual issue for trial.

B. Amended Formal Charge No. 2: Chair of the Southwest Florida Water Management District

Amended Formal Charge No. 2 alleges:

> During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you knowingly and purposefully misrepresented in the same brochure (attached hereto as Exhibit A) your holding of an office in the Southwest Florida Water Management District by running a picture of you with a nameplate that says "John K. Renke, III Chair" beneath a Southwest Florida Water Management District banner, when you were not in fact the Chairman of the Southwest Florida Water Management District.

Judge Renke asserts that the "picture and text referenced by Amended Formal Charge No. 2 are not misleading." Motion for Summary Judgment Amended Formal Charge No. 2, p. 3. Yet it is undisputed that on the first page of the campaign flyer there is a picture of Judge Renke sitting at a desk or dias in front of a large sign or panel proclaiming "Southwest Florida Water Management District," while in the foreground there is a name plate with "John K. Renke, III Chair." Id., Exhibit 2; Judge Renke Depo., p. 25.

It is undisputed that Judge Renke was never chairman of the Southwest Florida Management District ("SWFWMD") because no such position ever existed and he certainly never occupied it. Judge Renke Depo., pp. 27-28. Instead, Judge Renke was Chairman of the Coastal River Basin Board, but his mailer identifies him as the "Chair" of SWFWMD not the Coastal River Basin Board, Id., pp. 25-26, and Judge Renke has admitted that it was false to

represent that he was chairman of SWFWMD. Id., pp. 26-28. Hardly "true statements" that could be "deemed misleading or deceptive" as Judge Renke contends. Motion for Summary Judgment Amended Formal Charge II, pp. 4-5.

C. Amended Formal Charge No. 3: The Clearwater Firefighters

Amended Formal Charge No. 3 alleges:

> During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you knowingly and purposefully misrepresented in the same brochure (attached hereto as Exhibit A) your endorsement by the Clearwater firefighters by asserting that you were "supported by our areas bravest: John with Kevin Bowler and the Clearwater firefighters" when you did not then have an endorsement from any group of or any group representing the Clearwater firefighters.

It is undisputed that the same campaign mailer which portrays Judge Renke as the "chair" of SWFWMD also includes a picture of Judge Renke with a group of uniformed fireman with the caption: "Supported by our area's bravest," John [Renke] with Kevin Bowler of the Clearwater firefighters." See Exhibit 2 to Motion for Summary Judgment Amended Formal Charge III. Thus, the mailer represented that Judge Renke was "supported" by "the Clearwater firefighters." Id. It does not say some, many, a few, or only the men shown supported Judge Renke, but boldly and falsely asserts the support of "the Clearwater firefighters" collectively. Id.

Yet it is undisputed that no pre-existing group or organization of Clearwater firefighters ever supported or endorsed Judge Renke, just Kevin Bowler and the

individuals shown did so. Judge Renke Depo., pp. 29-31. It is undisputed that though there was and is a firefighters union in Clearwater, Judge Renke never sought or received its endorsement or support, and no other groups or organizations of or representing the "Clearwater firefighters" endorsed him. Id., p. 29.

D. Amended Formal Charge No. 4: Real Judicial Experience

Amended Formal Charge No. 4 alleges:

> During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you knowingly and purposefully misrepresented in the same brochure (attached hereto as Exhibit A) your judicial experience when you described yourself as having "real judicial experience as a hearing officer in hearing appeals from administrative law judges," when your actual participation was limited to one instance where you acted as a hearing officer and to other instances where you were sitting as a board member of an administrative agency.

Judge Renke argues that it was not an actionable misrepresentation to assert in a campaign mailer that he had "real judicial experience" as a SWFWMD hearing officer and hearing appeals from administrative law judges. See Exhibit A to Notice of Formal Charges. Yet it is undisputed that Judge Renke's "real judicial experience" consisted of acting as a hearing officer in a single case (Thomas v. SWFWMD), Judge Renke Depo., pp. 36-37 and 38, and participating in consideration of appeals by the Board collectively; Judge Renke individually simply did not individually "hear" any "appeals." Id., pp. 33-34.

E. Amended Formal Charge No. 5: Party Officials As Public Officials

Amended Formal Charge No. 5 alleges:

> During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you knowingly and purposefully misrepresented your endorsement by Pinellas County public officials in a campaign flyer attached hereto as Exhibit B, when you listed a number of persons, including Paul Bedinghaus, Gail Hebert, John Milford, George Jirotka and Nancy Riley as such, when they in fact were not Pinellas County public officials but instead officials of a private, partisan political organization to wit, the Pinellas County Republican Party.

Judge Renke contends that this was a true statement and if not it was a "false statement negligently made" which is protected by the First Amendment under Weaver. Motion for Summary Judgment Amended Formal Charge No. 5, pp. 5-6. Yet it is undisputed that Judge Renke's campaign literature lists the endorsement and support of "public officials" and includes officials of the Republican Party with their party titles, e.g., Chairman, Treasurer, etc., but with no reference to the Republican Party or their actual positions as being officials within the Republican Party. Id., Exhibit 1.

It is also undisputed that these officers of a partisan political party are elected strictly by members of that party, and the public at large cannot and does not participate in their "election." Judge Renke Depo., pp. 42-44. Thus, it was false to represent them as "public officials" supporting Renke.

F. Amended Formal Charge No. 6: Eight Years of Experience Handling Complex Civil Trials in Many Areas

Amended Formal Charge No. 6 alleges:

> During the campaign in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you knowingly and purposefully misrepresented your experience as a practicing lawyer and thus your qualifications to be a circuit court judge. In the Candidate Reply you authored which was published by and in the St. Petersburg Times, which is attached hereto as Exhibit C, you represented that you had "almost eight years of experience handling complex civil trials in many areas." This was knowingly false and misleading because in fact you had little or no actual trial or courtroom experience.

Judge Renke attempts to portray this charge as "pertain[ing] to the debate between Judge Renke and his opponent, Declan Mansfield, regarding their respective experience." Motion for Summary Judgment Amended Formal Charges VI and VII, p. 1. This is incorrect. Amended Formal Charge No. 6 alleges that in the Candidate Reply authorized by Judge Renke (and published by the St. Petersburg Times on September 7, 2002 – a few days before the election), Judge Renke represented that he had "almost eight years of experience handling complex civil trials in many areas." Id., Exhibit 4 (emphasis added). "This was knowingly false . . . because in fact" Judge Renke "had little or no actual trial or courtroom experience." Amended Formal Charge No. 6.

In his deposition, Judge Renke testified that it was a mistake to say "trials" instead of "litigation" because he in fact did not have any such "civil trial"

experience. Judge Renke Depo., pp. 142-143; 143-145. Thus, Judge Renke had conceded that the statement giving rise to this charge was false, but attempts to pass it off as a mistake he "didn't catch." Id., pp. 142-143.

When pressed Judge Renke was unable to name even a single complex civil trial he had "handled" in "almost eight years" of practice, Judge Renke Dep., p. 143, and admitted that a truthful and accurate description of his experience should have said he had "almost eight years" of experience "working up and litigating prior to trial" not "handling complex civil trials" because his actual trial experience was far more limited. Id., pp. 144-145. Indeed, at deposition Judge Renke could only identify a single vertical blinds case in small claims court where he actually "handled" the case. A very far cry indeed from his undisputed representations regarding his trial and courtroom experience. Id., pp. 131-133. Thus, Judge Renke has conceded that this representation was false, and his knowledge and intent remain for final hearing. Rudd, 545 So. 2d at 372; Dean, 156 So. 2d at 549.

In his summary judgment motion Judge Renke has further confirmed both the material falsity of these representations and that they were knowingly made. Judge Renke now asserts that he admitted to the St. Petersburg Times Editorial Board that "he has done few trials on his own prior to August 29, 2002." Motion for Summary Judgment Amended Formal Charge Nos. 6 and 7, p. 4 and Exhibit 6 thereto. Yet it is undisputed that in the St. Petersburg Times Candidate Reply,

which was published on September 7, 2002, Judge Renke boldly contradicted his own prior admission to the newspaper's Editorial Board by representing to the voting public that he had "almost eight years of experience handling complex civil trials." The only reasonable conclusion is that Judge Renke did so knowingly as charged. Judge Renke asserts he admitted to having no such experience to the Editorial Board, but then subsequently turned and contradicted himself by indisputably falsely representing on September 7, 2005 that he had "almost eight years of experience handling complex civil trials."

G. AMENDED FORMAL CHARGE NO. 7: MANY YEARS OF BROAD CIVIL TRIAL EXPERIENCE

Amended Formal Charge No. 7 alleges:

> During the campaign in violation of Canon 7A(3)(a) and Canon 7(A)(3)(d)(iii), you knowingly and purposefully misrepresented your experience as a practicing lawyer and thus your qualifications to be a circuit court judge, as well as your opponent's experience, by asserting in a piece of campaign literature, which is attached hereto as Exhibit D, that your opponent lacked "the kind of broad experience that best prepares someone to serve as a Circuit Court Judge" and represented to the voting public that the voters would be "better served by an attorney [like you] who has many years of broad civil trial experience." This was knowingly false because your opponent had far more experience as a lawyer and in the courtroom and in fact you had little or no actual trial or courtroom experience.

Judge Renke seeks to avoid responsibility under this charge by attempting to attack his opponent's campaign and minimize his own misconduct. Yet it is undisputed that a mailer distributed during the campaign represented that the

public's "interest would be better served" by an attorney like Judge Renke with "many years of broad civil trial experience in the courtroom." See Exhibit 4 to the Motion for Summary Judgment Amended Formal Charges VI and VII (emphasis added). The same mailer represented that his opponent (Declan Mansfield) lacked such experience which "best prepares someone to serve as a circuit court judge." Id.

As explained in detail above, these representations were false as Judge Renke conceded in his deposition and now effectively concedes in the motion for summary judgment on these charges. See e.g., Motion for Summary Judgment Amended Formal Charges VI and VII, p. 8 ("Since Judge Renke had intended to convey his experience in handling cases in which a complaint and answer had been filed and discovery had commenced rather than his experience actually trying cases, the appropriate term was litigation experience rather than trial experience.").

This is further confirmed by the Full and Public Disclosure of Financial Interests filed by Judge Renke with the Secretary of State on May 15, 2002 when the campaign had hardly begun. See Exhibit E to Judge Renke's Depo. Therein, Judge Renke responded in full to a question asking for the five most significant cases he had "personally litigated," Id., p. 10, 29(d); Judge Renke Depo. pp. 136-138, but left entirely blank the answer to a question asking him to identify the five most significant cases he had "personally tried or heard." Id., p.

13, 31(d) (emphasis added); Judge Renke Depo, pp. 136-138. Thus, Judge Renke knew in May 2002 that while he had "personally litigated" some significant cases, he had not personally "tried" any, thus he did not even attempt to answer the second question. Instead, left the answer space blank because he had not "tried" any "significant cases."

It is undisputed that Judge Renke represented that he had "many years of broad civil trial experience in the courtroom" which his opponent lacked making Judge Renke "best prepare[d]" him "to serve as a circuit court judge." Id., Exhibit 4 thereto. (emphasis added). This was also false as Judge Renke now concedes.

It is also undisputed that his opponent had far more years of experience "in the courtroom," because Judge Renke had very little actual "civil trial experience." Indeed, as Judge Renke well knew by 2002, Declan Mansfield had had practiced law for decades, and had tried hundreds of cases, both bench and jury, as a prosecutor in New York and in Pasco County. Thus, it is undisputed that Judge Renke's opponent had vastly more experience "in the courtroom," and the Renke Campaign's representations to the contrary were obviously false. The numerous times during the campaign that Judge Renke misrepresented his trial and courtroom experience belies any assertion that these falsehoods were innocently or inadvertently published or made, as Judge Renke now contends.

III. CONCLUSION

For all of the foregoing reasons, the JQC respectfully submits that Judge Renke's Motions for Summary Judgment on Amended Formal Charge Nos. 1 through 7 should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing Response to Judge John Renke, III's Memorandum of Law and Motions for Summary Judgemtn on the Amended Formal Charges has been furnished by Fax and U.S. Mail to **Scott K. Tozian, Esquire**, Smith & Tozian, P.A., 109 North Brush Street, Suite 200, Tampa, Florida 33602-4163 this 22nd day of August, 2005.

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Attorney